

AN ORDINANCE OF THE COUNTY OF BEAUFORT, SOUTH CAROLINA, TO APPROVE A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT (OSPREY POINT) BETWEEN BEAUFORT COUNTY TO LCP III, LLC PURSUANT TO SECTION 6-31-30 OF THE *CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED.*

NOW, THEREFORE, BE IT ORDAINED that Beaufort County Council adopts this Ordinance so to amend the Osprey Point Development Agreement all of which is more fully set forth in the document entitled First Amendment to Development Agreement, a copy of which is attached hereto and incorporated by reference herein as if set forth verbatim.


This ordinance shall become effective upon filing of an executed First Amendment to Development Agreement with the Beaufort County Clerk to Council.

Adopted this 8th day of December, 2014.


COUNTY COUNCIL OF BEAUFORT COUNTY

By: 
D. Paul Sommerville, Chairman

APPROVED AS TO FORM:


Joshua A. Gruber, Deputy County Administrator
Special Counsel

ATTEST:


Suzanne M. Rainey, Clerk to Council

First Reading: October 13, 2014

Second Reading: October 27, 2014 and November 10, 2014

Public Hearing: October 27, 2014 and November 10, 2014

Third and Final Reading: December 8, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) **FIRST AMENDMENT TO**
) **OSPREY POINT DEVELOPMENT**
) **AGREEMENT AND PUD ZONING**

This First Amendment To Osprey Point Development Agreement and PUD Zoning is made and entered this 8th day of December, 2014, by and between LCP III, LLC (Owner), and the governmental authority of Beaufort County, South Carolina ("County").

WHEREAS, a Development Agreement, with accompanying PUD Zoning, was made and entered between Owner and County for Osprey Point, as recorded in Book 2888 at page 169, et. seq., on September 3, 2009, following passage by Beaufort County Council and due execution by the parties; and,

WHEREAS, Osprey Point is a portion of a larger, coordinated development area, known as Okatie Village, which also included the Okatie Marsh PUD and the River Oaks PUD, with their respective Development Agreements, which were negotiated, adopted and recorded simultaneously with Osprey Point; and,

WHEREAS, no development activity or sales activity has taken place within the overall Okatie Village properties, including Osprey Point, during the approximately five years since the original approvals of these developments; and,

WHEREAS, a related entity, Malind Bluff Development, LLC, has taken a small interest in the Osprey Point property for development financing purposes, and is therefore joining into this First Amendment to evidence its agreement with and consent hereto (see the attached Exhibit H Joinder); and,

WHEREAS, the original Development Agreements for Okatie Village, including Osprey Point, will expire and terminate in September of 2014; and,

WHEREAS, significant changes have taken place in real estate market conditions and within the Okatie Village development area since the original approvals for Osprey Point, making it practically and economically unfeasible to develop Osprey Point under the exact terms of the original Osprey Point Development Agreement and PUD; and,

WHEREAS, the Owner and County have agreed to Amend the Osprey Point Development Agreement and PUD in order to adjust the terms thereof to reflect current conditions, as provided below, while at the same time significantly reducing the density of Osprey Point and preserving the important protections to the environment and many other important features of the original Development Agreement, as also provided below;

NOW THEREFORE, in consideration of the terms and conditions hereof, the Owner and County hereby agree as follows:

I. INCORPORATION.

The above recitals are hereby incorporated herein by reference.

II. STATEMENT OF DEVELOPMENT BACKGROUND AND CHANGES TO MARKET CONDITIONS AND OTHER CIRCUMSTANCES.

Planning and negotiations toward ultimate approval of the three Okatie Village Tracts, including Osprey Point, occurred in 2006 - 2008, at a time that development was exploding in Beaufort County, and the pace of that development activity was expected to continue and

accelerate as the baby boom generation was beginning to reach retirement age. Prices for homes and for commercial properties were escalating and that trend was expected to continue.

All of these trends ended before development of any of the Okatie Village communities could begin. Sales prices plummeted and a financial crisis prevented developers from acquiring needed development loans, and prevented potential buyers from obtaining home loans, even at reduced prices. Okatie Village properties were particularly hard hit, since their Development Agreements imposed fees and burdens beyond any other development properties in Beaufort County.

The Okatie Marsh PUD failed completely before any development took place. Beaufort County acquired the entire property, which has been added to the County's Open Space land holdings. River Oaks has likewise been struggling and its ultimate fate is being determined. Osprey Point, the central property of the three Okatie Village tracts, now has real potential to move forward in an economically conscientious way, under the name Malind Bluff. Several changes to the original plan have been necessitated by these changing market conditions, and are set forth below. Some of the changes are significant, while others are relatively minor. The justifications for each of these changes are set forth as the changes themselves are discussed.

III. DEVELOPMENT PLAN CHANGES.

A revised Master Plan and revised Trail and Open Space Plan are attached hereto as Exhibits B and C respectively (Exhibit A hereto is a restatement of the property description of Osprey Point, which is unchanged). Both the Development Agreement and PUD Zoning are hereby amended to reflect all changes which are shown and depicted on the revised Exhibits B and

C, both regarding the specific changes that are referenced below and any other changes that are necessary, by implication, to effectuate these Development Plan and Master Plan changes. The following changes are specifically listed and approved:

A. **Commercial and Residential Density Reduction.** The allowed commercial and residential densities for Osprey Point are set forth in Section IV(C) and IV(D) of the Development Agreement, and referenced in the attached PUD approval text and drawings. These allowed densities are hereby reduced for residential density. The allowed density for commercial development remains 207,000 square feet. The new allowed residential density is now 396 total residential units, rather than the original 527 residential units. The original Development Agreement and PUD allowed the Owner/Developer the freedom to determine the mix of single family detached, attached and multifamily units, depending upon market conditions. This flexibility remains effective, but it is specifically noted that the current intent is to develop all or most of the residential units as single family detached units, with final lot configuration and sizes to be at the discretion of Owner/Developer.

Notwithstanding this general design flexibility, Owner hereby commits to a scheme of density and use allocation as set forth on the attached Exhibit I, Amended Osprey Point Transect Zones. The terms of Exhibit I are hereby incorporated into this First Amendment and made binding upon the Property. Basically, the approximately 8.5 acre portion of the Property nearest to the marsh will be utilized for open space, park, and community recreational purposes only, with no residential construction allowed (current cottage/lodge site excepted). The private residential zone closest to the Park/Community area will have the lowest maximum density, to

minimize potential impacts upon the tidal wetlands. The adjoining private residential zone, extending to the Connector Road, will allow increased residential density with an allowance of townhouse and multifamily units, so that this higher density area will be most accessible to the adjacent Commercial Area. The Commercial Area will continue to have the same standards, allowed uses and densities as set forth in the original PUD and Development Agreement. The commitment to a Village scale commercial design, as provided under the Original PUD and Design Guidelines, remains unchanged.

B. Allowed Development Type and Resulting Changes to Roadway and Pathway (Including Trails) Standards. The current development planning for the Osprey Point development envisions an age restricted community, within the meaning and under the terms of federal law, to be located within the residential area depicted on the Exhibit B Amended Master Plan. A residential developer is currently in place to develop the age restricted community and it is hereby specifically provided that such an age restricted community is allowed. The residential area is planned to be single family detached, although other residential building types are allowed. Only age restricted residential development will be allowed within the private residential, restricted access area of the Master Plan. No non-age restricted residential development may be undertaken within this private area unless specifically approved in the future by Beaufort County as a major Amendment hereto.

A successful age restricted community requires private roads and the ability to restrict access. This essential fact was recognized by the County in the adjacent River Oaks Development Agreement, where private roads and restricted access were allowed, specifically because of the

"senior village nature of the development". For the same reason, pathways and trails within the age restricted area may also be private and restricted. It is specifically noted, however, that the frontage Connector Road as well as roads within the commercial area, shall remain open to the public as originally provided, and provide a means of interconnectivity to adjacent parcels. It is also noted, that a public access easement to serve as an access to River Oaks PUD is provided along the southern boundary of the Osprey Point Amended Master Plan, to preserve access for River Oaks to the commercial area, the Connector Road, and to Highway 170. This access easement area shall be granted by Owner to the River Oaks property and to Beaufort County, as grantees, and the grant of this access easement shall take place within 120 days of execution and recording hereof. Beaufort County shall have no obligation to construct or maintain such roadway, and no obligation to accept title or responsibility for such roadway. Under the original Development Agreement, Section IV(F), the Connector Road was to be constructed as part of the first phase of Osprey Point development, to provide access across Osprey Point for the expected development of Okatie Marsh. Now that Okatie Marsh has been purchased by the County for Open Space, the Connector Road shall be developed at the time of development of Phase I development; provided, however, that Owner may satisfy this requirement by posting a bond for this road construction at 125% of its estimated cost with Beaufort County, when Phase I development commences, with the commitment to construct the road at the time that fifty percent of the allowed residential density has been permitted for vertical construction. An easement shall be granted to Beaufort County and the River Oaks owner to allow said access, within 120 days of execution and recording hereof. Beaufort County shall have no obligation to the construction or

maintain such roadway. Section VIII(A) of the original Development Agreement is hereby amended to allow such private roads and restricted access within the residential area, and also within open space areas associated with the residential area. As stated above, the planned pathways and trails within the residential area of Osprey Point may likewise be restricted, and the pathway and trail system is amended to provide for the system shown on Exhibit C hereto. Internal interconnectivity, to allow residents of Osprey Point (now to be known as Malind Bluff) to have access to the commercial area, waterfront area, and adjacent properties is retained, and shall be as depicted on Exhibit C for both pathway/trails and roadways. All provisions of the original Development Agreement and PUD to the contrary are hereby amended to conform herewith.

C. **Public Park Area/Access.** The original Development Agreement and PUD provided for an approximately 13 acre waterfront park area, for the enjoyment of residents within Osprey Point and the adjacent Okatie Marsh developments, with limited access rights for the public. Changes in circumstance and market conditions have now made this plan unnecessary and unworkable. The entire Okatie Marsh development, which includes waterfront property, is now owned by the County as public land. The total Okatie Village residents expected to share in the use of this area within Osprey Point has been reduced by more than 50% (due to the elimination of all Okatie Marsh density, and the substantial reduction of Osprey Point density under this Amendment).

In the light of these changed conditions, and due to the preference for privacy and safety associated with elderly and mature adult (age restricted) development, the waterfront acreage for open space/park use within Osprey Point is hereby reduced from 13 acres under Section IV(I) of

the Development Agreement, to approximately 8.5 acres, as depicted on the attached Exhibit B Master Plan. Public access is no longer required. Environmental standards to protect the adjacent waterway and wetlands are retained in full force and effect. The associated covenants/easements, as required under Section IV(I) of the Development Agreement are likewise no longer required. Section IV(I) of the Development Agreement and the relevant PUD provision are hereby amended, together with any other provision of the Development Agreement and PUD necessary to carry out this Amendment. Given the changes outlined above, and the stated justifications therefor, the existing cottage/lodge, now located on the waterfront, is no longer restricted and may be used for any legal residential or Osprey Point community purpose, and it may be utilized in its existing condition, renovated, replaced, or removed.

D. Design, Construction and Maintenance Contribution to County Park.

Owner agrees to design a passive park area upon the adjacent waterfront owned by the County and construct a passive park area of up to 13 acres on the adjacent County waterfront. This passive park design and construction shall include appropriate clearing, installation of improvements as illustrated on a County Park Conceptual Plan to be submitted prior to final reading hereof, and long term landscape maintenance of any cleared area, with all elements to be approved by County Planning Staff, in consultation with other County officials, consistent with the County Park Conceptual Plan to be developed by Owner, with County approval, prior to final reading hereof. Additionally, Owner will provide a pervious surface parking area for the public to include at least six parking spaces, off Pritcher Road, near Highway 170, on County property. A trail shall be provided from the parking area to the passive park and said trail may utilize Pritcher Road. Such

design and construction shall occur at the time of Owner's permitting and construction within the adjacent Osprey Point waterfront open space, which shall occur prior to the sale of any residential home within Osprey Point. The County will participate, as needed, in any required permits and easements for construction, maintenance, and use of this park area.

E. Public Safety Site. The Public Safety Site shall be located within the Commercial/Mixed Use area of the Master Plan. The area to be donated for a Public Safety Site shall be 1/2 acre, sufficient for a Fire/EMS facility, rather than the one acre site originally provided under Section IV(K) of the Development Agreement. Required drainage and open space for the public safety site shall be provided on the adjacent Commercial Area of Owner, so that the 1/2 acre site shall be a buildable area footprint.

F. Workforce Housing Requirement. Certain provisions for workforce housing are set forth under Section IV(A) of the Development Agreement. While this requirement remains in force, it is specifically noted and agreed that this requirement shall not be interpreted to prevent development of an age restricted community within Osprey Point. Workforce housing shall be provided within areas of the new Master Plan which are not within the age restricted area. As provided under the original Development Agreement, the requirements to provide Workforce/Affordable Housing apply only to multifamily product (10% of total) and to town home units (15% of total) and do not apply to single family home sites. This provision continues, so that the total of such units to be provided depends upon final product mix within Osprey Point. Notwithstanding the above, Owner agrees that a minimum of 15 residential units will be developed and offered at sales prices which qualify under the low income or moderate income affordability

standards as set forth in the Workforce/Affordable Housing Agreement. Such units shall be developed in the Commercial/Mixed Use Area, provided, however, that Owner shall have the option of paying into a fund established by Beaufort County for affordable housing, in lieu of constructing such housing within Osprey Point, under the same terms and fee structure adopted by Beaufort County for such purposes generally. At the time that fifty percent (50%) of the residential density has been constructed, Owner must elect to make payments in lieu of constructing affordable housing, or commence to construct the required affordable housing, if such has not been sooner accomplished. All required affordable housing must be completed, during the term hereof.

G. Impact/Development Fee Issues. No terms of the original Development Agreement regarding fees due under Sections IV(G) and IV(H) are changed by this First Amendment.

H. Design Guidelines/Residential Design. The Design Guidelines set forth in Section IV(M) of the Development Agreement (and Exhibit F thereto) are retained for the public area of Osprey Point. The age restricted, residential area will adopt its own design guidelines and review process, by private covenant, and will therefore not be bound by the original Design Guidelines. This change, for the non-public areas only, will provide the Owner/Developer with the needed flexibility to meet the needs and tastes of the age restricted market as development and sales unfold. Additionally, as is the case in most PUD development, internal residential lot, roadway, and layout design, including setbacks within residential lots, shall be at the discretion of Owner/Developer, so long as the final design does not violate the general layout depicted on the

Exhibit B Amended Master Plan.

Notwithstanding the above stated flexibility in residential structure and lot design, Owner hereby commits to expanded spacing of driveway locations in areas where lot sizes average less than 50 feet in width. To this end, driveway locations will be combined to maximize the distance between driveway entrances on the street, for both aesthetic and safety reasons. An illustration of this design concept is attached to demonstrate this principle. The resulting design shall assure that driveway pairs are separated from other driveway pairs by more than 50 feet, on any roadway section where lot widths average less than 50 feet. It is specifically noted that rear loaded lot access, provided from rear alley ways, is also an acceptable design solution to avoid excessive numbers of driveway locations on streetscapes with average lot width of less than 50 feet in width, and this design solution is also allowed within Osprey Point.

I. Agreement Not To Annex. Owner agrees that during the term hereof, and any extension thereof, Owner shall not seek or permit the property to be annexed into Jasper County or the City of Hardeeville. This provision may be enforced by the County by all available legal means, and include all remedies available at law or in equity, including specific performance and injunctive relief.

J. Development Schedule Amendment. The original Osprey Point Development Agreement included a Development Schedule provision under Section IV thereof and Exhibit D thereto. Subject to the same reservations and conditions provided under the original Development Agreement and Exhibit D, the Development Schedule is hereby amended as set forth in Exhibit D hereto.

K. Preliminary Drainage Plan, Water Plan and Sanitary Sewer Plans.

Because the essential elements of the PUD remain in the same general areas of the Property as originally contemplated, at reduced densities, the changes to these infrastructure systems are relatively minor, to reflect altered road locations. The system designs all remain within the original design tolerances previously approved. Expected new locations of these infrastructure systems are depicted on the attached Exhibits E, F, and G to the First Amendment, for sanitary sewer, stormwater drainage and water systems, respectively, subject to final engineering and approvals prior to construction.

L. Terms of Agreement/Incorporation/Default. The original Development Agreement and PUD were approved by both parties, effective September 3, 2009. The parties hereby agree that the original Development Agreement, and all Exhibits thereto including the PUD, is hereby incorporated by reference into this First Amendment To Osprey Point Development Agreement and PUD, and further, that said original documents are hereby amended as specifically provided herein, directly or by necessary implication. The term of this First Amendment shall be for five years from the date of execution hereof, provided that the term shall be further extended for an additional five years if neither party hereto is in material default hereunder and if development of the subject property has not been completed within the initial term hereof, and also, extended by any South Carolina laws which extend development permits and agreements generally. Both parties agree that with the adoption and execution hereof, no present defaults exist between the parties and all future activities within Osprey Point shall be governed by the terms hereof.

IN WITNESS WHEREOF, the parties hereby set their hands and seals, effective the date first above written.

WITNESSES

OWNER:

LCP III, LLC

By: _____

Its:

Attest: _____

Its:

STATE OF SOUTH CAROLINA

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ACKNOWLEDGMENT

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COUNTY OF BEAUFORT

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I HEREBY CERTIFY, that on this ____ day of _____, 2014. before me, the undersigned Notary Public of the State and County aforesaid, personally appeared _____, and _____ known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document, as the appropriate official of LCP III, LLC, who acknowledged the due execution of the foregoing document.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

Notary Public for South Carolina

My Commission Expires: _____

